123

(2)

Supreme Court, U.S.
FILED

081189 MAR 6 - 2009

OFFICE OF THE CLERK

In the
Supreme Court Of The United States.

APS

V.

Minnesota Department of Labor
&
Office of Administrative Hearings

On Petition for Writ Of Certiorari to The United States Court Of Appeals For The Eighth Circuit.

SUPLEMENTAL APENDIX

Pro Se
Adam P. Strege
24903 Tunnel Rd.
Brook Park MN 55007
(320) 629-8142

TABLE OF CONTENTS

Pages

Eight Circuit Order
January 14 2009 (07-2850).....1 - 2

United States District Court
District Of Minnesota
Memorandum Opinion and Order
July 06 2007 (06-4495).....3 - 11

District court of Minnesota
Order June 18, 2007 (06-4495).....12 - 15

One page Of Evidance.....16

United States Court Of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-2850

APS,	*	
Appellant	*	
V.	*	Appeal from the
Minnesota Department Of Labor, Office of Administrative Hearings	*	United States District Court for the District of Minnesota.
	*	
Appellees.	*	[UNPUBLISHED]

Submitted : December 29, 2008
Filed : January 14, 2009

Before MELLOY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Appellant "APS" appeals the district court's dismissal of his complaint brought under the Americans with Disabilities Act. Upon careful review, we affirm for the reasons explained by the district court. See Carter v. Arkansas, 392 F.3d 965, 968 (8TH Cir. 2004) (dismissal under Fed. R. Civ. P 12 (b)(6)); Mangan v. Weinberger, 848 F.2d 909, 911 (8th Cir. 1988) (Dismissal

under Fed. R. Civ. P. 8(a)).

---

1 The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

Additionally, the district court properly denied leave to further amend the complaint, also for the reasons explained by the court.

Accordingly, wee affirm the judgment. See 8TH Cir. 47B.

Case 0:06-cv-04495-ADM-RLE Document 61
Filed 07 / 06 / 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

APS,

Plaintiff,

MEMORANDUM OPINION
AND ORDER

V. Civil No. 06-4495 ADM/RLE

Minnesota Department of Labor,
And Office of Administrative Hearings,

Defendants.

Adam P. Strege, pro se.

Sarah A. McGee, Esq., Assistant Minnesota Attorney, St Paul, MN, argued on behalf of Defendants

---

I. INTRODUCTION

This matter is before the undersigned United States District Judge to consider Defendants Minnesota Department of Labor ("Department of Labor') and Office of Administrative Hearings' ("OAH") (collectively, " Defendants") Motion to Dismiss [Docket No. 23] and Plaintiff A P S ' s ("Plaintiff') Appeal [Docket No. 57] from Magistrate Judge Raymond L. Erickson "s

18, 2007, Order [Docket No. 52] denying Plaintiff's "Motion to Amend Complaint to 15 pages plus 89 Pages Supporting Evidence" [Docket No. 50]. For the reasons set forth herein, Defendants' Motion is granted and Plaintiff's appeal is Denied.

II. BACKGROUND

Although it is not entirely clear from Plaintiff's Complaint, it appears that his claims arise from a workers' compensation proceeding. In support of their motion to Dismiss, Defendants have attached the relevant order from those proceedings. See McGee Decl. [Docket No. 31] Ex. 2. This Court will consider the order to the extent it provides useful background

Facts.

On March 18, 2004, Plaintiff was employed by Commercial Dry Wall, Which Had Workers' compensation insurance with Federated Insurance Mutual Group (" Federated Insurance "). Id. At 2. On March 18, Plaintiff and co- worker engaged in a physical altercation during which Plaintiff was pushed, fell backward, and hit his head and left shoulder on a wall. Id. At 4. Plaintiff filed a workers' compensation claim seeking Benefits for a neck Injury and an alleged brain injury that affected his emotions and behavior. Id. At 7. Plaintiffs claim was heard on September 13, 2006, Before the State of Minnesota OAH Id. at 1. On October 20, 2006, an OAH Compensation Judge issued an order finding that Plaintiff had

sufficiently proven that the March 18, 2004, altercation caused a neck injury. Id. At 6. Based on Plaintiff's neck injury, the Compensation Judge ordered Commercial Dry Wall and Federated Insurance to pay Plaintiff temporary total disability benefits for the period of March 25 through July 15, 2004. Id at 7. However, the Compensation Judge found that Plaintiff did not provide sufficient medical evidence that the March 18 altercation caused a brain injury. Id. Therefore Plaintiff was awarded no workers' compensation for the treatment of his alleged brain injury. Id at 8. Plaintiff did Not pursue an administrative appeal. Instead, he filed the instant action on November 13, 2006. Complaint [Docket No. 1]'

Commercial Dry Wall and Federated Insurance Filed an administrative appeal on November 6, 2006. McGee Decl. Ex. 3. However, they voluntarily dismissed the appeal in December 2006. .

III DISCUSSION

A. Plaintiff's Appeal

The History of Plaintiff's attempts to amend his pleading is thoroughly set forth in Chief Magistrate Judge Raymond L. Erickson's June 18, 2007 order. That discussion is incorporated herein by reference. In short, on November 13, 2006, Plaintiff Filed a two-page Complaint, alleging disability discrimination and failure to

accommodate under the Americans with Disabilities Act ("ADA"), 42 U.S.C 12112(a), (b)(95)(A), and the Rehabilitation Act, 29 U.S.C 701 - 796. Although difficult to discern, it appears that the crux of Plaintiff's ADA and Rehabilitation Act claims is that Defendants effectively excluded him from participating in the workers' compensation proceedings by failing to adequately accommodate his alleged mental disability. After defendants moved to dismiss on April 30, 2007, Plaintiff filed his First Amended Complaint [Docket No. 37 on May 15, 2007. Subsequently, pursuant to leave granted by Judge Erickson, Plaintiff filed a Second Amended Complaint [docket No 44] on May 29, 2007. On June 11, 2007, Plaintiff filed his "motion to Amend Complaint to 15 pages plus 89 Pages supporting Evidence" ("Motion to Amend"). In his June 18, 2007, Order, Judge Erickson denied Plaintiff's Motion. On June 21 2007, Plaintiff filed his Appeal.

Although leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P 15(a), this Court agrees with Judge Erickson that Plaintiff S Motion should be denied. Plaintiff s supporting evidence, which consists of a scattershot collection of documents, is unnecessary and unhelpful at the pleading stage. Further, even if it were considered, Plaintiff's supporting evidence would not affect the adjudication of Defendants Motion to Dismiss. Therefore, Plaintiff's Appeal is denied and the court will determine whether Plaintiffs's May 29, 2007, Second Amended Complaint survives

Defendant 's Motion to Dismiss [2]

---

[2] Although Defendants moved to dismiss plaintiff's initial Complaint, Defendant 's counsel agreed at oral argument that Defendant 's Motion and brief apply equally to Plaintiff 's Second Amended Complaint.

B. Defendants ' Motion to Dismiss

1. Pleadings and Motion to Dismiss Standards

Under Rule 8(a) Of the Federal Rules of Civil Procedure, Pleadings setting forth a claim for relief must include "a short and plain statement of the claim showing that the pleader is entitled to relief." "The essential function of notice pleading ' is to give the opposing party fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved." N. States Power Co. v. Fed. Transit Admin., 358 F.3d 1050, 1056-57 (8th Cir. 2004) (citation omitted).

Rule 12 of the Federal Rules of Civil Procedure provides that a party may move to dismiss a complaint for Failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12 (b)(6). In considering a motion to dismiss, the pleadings are construed in the light most favorable to the nonmoving party, and the facts alleged in the complaint must be taken as true. Hamm V. Groose, 15 F.3d 110, 112 (8th Cir. 1994); Ossman v. Diana Corp., 825 F. Supp. 870, 879-80 (D, Minn. 1993). Any ambiguities

concerning the sufficiency of the claims must be resolved in favor of the nonmoving party. Ossman 825 F. Supp. At 880. "A motion to dismiss should be granted as a practical matter .. Only in the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Frey v. City Of Herculaneum, 44 F.3d 667, 671 (8th Cir. 1995). Pro se complaints are to be construed liberally. Estelle v. Gamble, 429 U.S. 97, 106 (1976). However, a pro se complaint must still allege specific facts to support its conclusions. Martin v. Sargent 780 F.2d 1334, 1337 (8th Cir 1985).

2. The Second Amended Complaint

Plaintiff's Second Amended Complaint is Rambling, garbled, and difficult to decipher. Plaintiff conclusorily alleges that he was denied the right to hire a lawyer during the workers' compensation proceeding, his Mental disability was not adequately accommodated, certain tape recordings of his statements were altered by Federated Insurance, the Compensation Judges Findings were not supported by the evidence, the department of Labor Lacks adequate grievance procedures, Plaintiff's private information was improperly disclosed. In addition to the afore mentioned ADA and Rehabilitation Act claims, The Second Amended Complaint alleges violations of procedural and substantive due process under the First Amendment, the right to petition the government for redress of

grievances under the first Amendment, and Equal Protection Clause.

Plaintiff's constitutional claims against the Minnesota Department of Labor and the Office of Administrative Hearings are barred by the Eleventh Amendment. The Eleventh Amendment stated that "[t]he Judicial power of the United States shall not be construed to extend to any suit in Law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Supreme Court interprets the Eleventh Amendment to prohibit suits in federal court against an unloosening state or one of its agencies or departments. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100-101 (1984). A state may be sued in federal court if it has consented or if Congress has abrogated its immunity. Here, Plaintiff's only cognizable claim for damages against Defendants for violation of the federal constitution is an action Under 42 U.S.C. 1983. However, 42 U.S.C. 1983 does not abrogate the states Eleventh Amendment immunity. Quern v. Jordan, 440 U.S. 332, 334 (1979), and the State of Minnesota has not consented to 1983 suits in federal Court. Therefore, Plaintiffs constitutional claims must be dismissed.

---

3 plaintiff's supporting evidence shows that Plaintiff initially retained counsel in the workers' compensation proceedings. However, his counsel withdrew on March 29, 2006, in part because of

Plaintiff's persistence in filing complaints with various state agencies without consulting with his counsel. See Motion to Amend, Attach. At 83-86. Thereafter, Plaintiff proceeded pro se.

Plaintiff's ADA and Rehabilitation Act claims must also be dismissed because the Second Amended Complaint Fails to Make any "short plain statement[s]" showing that Plaintiff is entitled to relief under those statutes. Even when liberally construed, the allegations in the second Amended Complaint fail to give each Defendant notice of the grounds upon which Plaintiff"s ADA and Rehabilitation Act claims rest. Plaintiff is obviously dissatisfied with the outcome of his workers' compensation hearing. However, the Second Amended Complaint's conclusory allegations fail to meet even the minimal pleading standards set forth in Federal Rule of Civil Procedure 8(a). Therefore, Defendants' Motion to Dismiss is granted

Further, the Court finds that Plaintiff's Amended Complaint should be dismissed with prejudice. Plaintiff has submitted multiple amended complaints And none come close to meeting the "short and plain statement" requirement of Rule 8(a). There is no basis in any of Plaintiff's filings that would allow him to state a viable ADA or Rehabilitation Act

claim. On these facts, further amendment would be futile. See knapp v. Hanson, 183 F.3d 786, 790 (8TH Cir 1999) (noting that "futility constitutes a valid reason for denial of a motion to amend")

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Plaintiff's Appeal [Docket No. 57] is Denied; and

2. Defendants Minnesota Department of Labor and Office of Administrative Hearings Motion to Dismiss [docket No. 23] is GRANTED; and

3. Plaintiff's Second Amended Complaint [docket No. 44] is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

S/Ann D Montgomery

ANN D MONTGOMERY
U.S. DISTRICT JUDGE

Dated July 6, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* *

APS,

Plaintiff,

ORDER

Vs.

Minnesota Department of
Labor, and office of
Administrative Hearings,

Defendants.

Civ. No. 06-4495 (ADM/RLE)
June 18 2007

* *

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C 636(b)(1)(A), upon the Plaintiff's submission of a self-styled Motion to Amend Complaint. See, Docket No. 50.

The plaintiff, who is proceeding pro se, commenced this action by filing a Complaint, and paying a filing fee, on November 13, 2006.

He seeks relief for The Defendant's alleged violations of the Fourteenth Amendment, and Title II of the Americans with Disabilities Act. See, Complaint, Docket No 1, at p. 1.

Since The date of his original filing, the Plaintiff Has made several attempts to amend his Complaint. On May 15, 2007, the Plaintiff filed an Amended Complaint with the Clerk of Court, see, Docket No. 37, and on May 17, 2007, we issued an Order acknowledging the Plaintiff's right to file, and serve, an Amended Complaint under Rule 15(a), Federal Rules of Civil Procedure, as no responsive pleading had been served in this matter at that time. See, Docket No. 38.

On May 18, 2007, Plaintiff Filed a "Motion to File a New Complaint," in which he stated that the document that he previously submitted as his Amended Complaint was, In Fact, merely a compilation of evidence in support of his position, and asked that he be allowed to cull nineteen (19) pages from that previous filings to constitute his Amended Complaint. See, Docket No. 39. By order dated May 21, 2007, see, Docket No. 40, we granted the Plaintiff's request to resubmit those nineteen (19) pages To constitute his Amended Complaint. However, at that time, we emphasized to the Plaintiff that we were not granting him leave to file any new or additional documents with the Court, but were merely allowing him to narrow his earlier filings so as to better express the substance of his claims in this matter.

On May 23, 2007, the Plaintiff filed a twenty-nine (29) page document with the Clerk of Court that was labeled "Amended Complaint." See Docket No. 41. We directed the Clerk of court to strike Docket No. 41 for non-compliance with our previous Orders. On May 29, 2007, the Plaintiff filed a fifteen (15) page Amended Complaint, see, Docket No 44, that we accept as the Plaintiff's final Amended Complaint. However, on June 4, 2007, the Plaintiff filed still another Amended Complaint, see, Docket no. 47 that, together with attachments, was one hundred and seven (107) pages long. At that time, we issued an Order, in which we explained that we had already accepted the (15) page Amended Complaint, that was filed on May 29, 2007, as the Plaintiff's last Amended Complaint and, if the Plaintiff sought further leave to amend his Complaint, he would have to follow the formal Motion practice, and seek leave of the Court to do so.

On June 11, 2007, Plaintiff submitted a Motion to Amend Complaint, see, Docket No. 50, In which, once again, he asks Court leave to amend his Complaint. We have reviewed the Plaintiff's proposed Amended Complaint, Which is attached to his Motion to Amend, and we find that it is substantively identical to the Amended Complaint that we have already accepted as the Plaintiff's last Amended Complaint. For that reason, we deny the Plaintiff's Motion as moot.

Finally, in response to the Plaintiff"s apparent confusion regarding the date of his next Court

appearance, we remind the Plaintiff that a Hearing on the Defendants' Motion to Dismiss will be held Before the District Court, The Honorable Ann D. Montgomery presiding, In Minneapolis, Minnesota, at 9:00 o' clock a.m., on June 26, 2007. See, Docket No. 24.

NOW THEREFORE, It is -

ORDERED :

That the Plaintiff 's Motion to Amend Complaint [docket no. 50] is DENIED as moot.

BY THE COURT;

Dated; June 18, 2007

Raymond L. Erickson
Chief U.S. Magistrate Judge

BEST AVAILABLE COPY

State of Minnesota — Ramsey District Court

9-30-08.

CITY OF SAINT PAUL

Picture

Citation No 808082825

ST PAUL POLICE DEPT

License Number	State	Plate Year
TGG244	MN	2009

Color RED

Make HOND Body Style 2D

Date of Offense 08/07/2008 Time 09:45

Offense 1 169.79.7 $111.00

Parked - displaying license plate - obscured plate violation

08-26-08 A09117 IN

Total Due: $111.00

Location
506 EB SUMMIT AV

Beat 974 SURFACE PARKING

Comments
PLATE COVER ON FRONT AND REAR PLATE

Officer 1 Buzicky, P

Officer Number 88650

Report defective meters by noon the next business day
Call (651) 266-8126
To pay your fine by credit card, wait 10 business days and then call
(651) 266-9202